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Nos. 148, 149, 150, 151 and 155

In the Supreme Court of the United States

OCTOBER TERM, 1946

EDGAR S. ALBRECHT ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

EDWARD J. LINNENBRINGER, PETITIONER

v.

UNITED STATES OF AMERICA

DENNIS B. PITMAN ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

A. RAY OLIVER ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

Q. W. S. S. REALTY AND INVESTMENT COMPANY, A CORPORATION, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1946

No. 148

EDGAR S. ALBRECHT ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 149

EDWARD J. LINNENBRINGER, PETITIONER

v.

UNITED STATES OF AMERICA

No. 150

DENNIS B. PITMAN ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 151.

A. RAY OLIVER ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 155

Q. W. S. S. Realty and Investment Company, a Corporation, petitioner

v.

United States of America

ON WRITS OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

OPINIONS BELOW

The opinion of the district court in No. 151 is reported at 60 F. Supp. 741.[1] The opinion of the district court in Nos. 149 and 150 (R. 162–180, 249–267) is reported at 61 F. Supp. 199.[2] The unreported opinion of the district court in Nos. 148 and 155 is found at R. 36–37, 103–104. The opinion of the circuit court of appeals in *Oliver* v. *United States,* No. 151 (No. 151, R. 77–84) is reported at 155 F. 2d 73, and in *United States* v. *Albrecht, et al.,* Nos. 148–150 and 155 (R. 295–296) at 155 F. 2d 77.

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[1] This opinion is not in the Record, but mimeographed copies have been filed with the Clerk of this Court.

[2] The records in Nos. 148–150 and 155 were consolidated and will be referred to as "R." without further identification. The record in No. 151 will be referred to as "No. 151, R."

JURISDICTION

The judgments of the circuit court of appeals were entered on April 9, 1946 (R. 303–306; No. 151, R. 85). Petitions for rehearing were denied on April 30, 1946 (R. 321, 329, 341, 349; No. 151, R. 99). The petitions for writs of certiorari were filed on June 7 and 8, 1946, and were granted on October 14, 1946 (R. 356–357; No. 151, R. 105). The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether the United States is obligated to pay interest upon an award in condemnation proceedings where no determination of just compensation is made but where the award, at the insistence of the landowner, is fixed in the amount agreed upon in a contract which gave the United States the right of possession prior to payment and made no provision for interest.

STATUTES INVOLVED

The pertinent provisions of the Act of July 2, 1917, 40 Stat. 241, c. 35, as amended by the Act of April 11, 1918, 40 Stat. 518, c. 51, 50 U. S. C. 171 and the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421–1422, c. 307, secs. 1–5, 40 U. S. C. 258a–258e, are set out in Appendix, *infra*, pp. 43–47.

STATEMENT

These cases arise out of a large number of proceedings brought by the United States to condemn the fee simple title to certain lands in St. Charles County, Missouri, for the Weldon Spring Ordnance Plant (see R. 297, 295–296). The efforts of the War Department to acquire the land for the ordnance plant, its acceptance of approximately 270 contracts for the purchase of the land needed, and its subsequent unsuccessful attempt to repudiate all the contracts which had not been fully executed upon concluding that the contracts were invalid are detailed in the opinions in *United States* v. *Certain Land Situate in St. Chas. Co.*, 46 F. Supp. 921 (E. D. Mo.), reversed *sub nom. United States* v. *Muschany*, 139 F. 2d 661 (C. C. A. 8), reversed *sub nom. Muschany* v. *United States*, 324 U. S. 49. In the latter case, this Court upheld the validity of the contracts. The cases at bar involve several of the contracts which in their material portions are identical with those involved in the *Muschany* case, *supra*.

About six months prior to the institution of the various condemnation proceedings, the petitioners granted to the United States options to purchase their lands at fixed prices (R. 27–29, 85–93, 149–151, 237–242; No. 151, R. 36–38). These offers were duly accepted on behalf of the United States (R. 29, 93, 151, 242; No. 151, R. 38). The contracts thus executed granted to the Government

the right of immediate occupancy and use of the lands for any purpose whatsoever from and after the acceptance of the options until such time as the lands should be conveyed to the Government, the titles approved by the Attorney General of the United States, and the agreed purchase prices paid (R. 28, 92, 150, 241; No. 151, R. 37). The contracts provided that the landowners would convey titles free of all liens and encumbrances and, if necessary, make the titles merchantable, and that the purchase prices would be paid when certificates showing the titles to be vested in the United States should be furnished (R. 28, 92, 150, 241; No. 151, R. 37). The contracts further provided that (R. 29, 92–93, 151, 242; No. 151, R. 37–38).

> If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.
>
> The occupancy and use of the land by the Government as granted aforesaid shall not

be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

The United States took possession under the contracts (R. 23, 93, 151, 230; No. 151, R. 17–20, 26). Thereafter it sought to repudiate the contracts and to acquire the lands by condemnation proceedings which were instituted under the Act of July 2, 1917, 40 Stat. 241, c. 35, as amended by the Act of April 11, 1918, 40 Stat. 518, c. 51, 50 U. S. C. 171, by the filing of petitions requesting that commissioners be appointed to determine, assess and award compensation (R. 9, 63, 129, 204; No. 151, R. 4). Declarations of taking were filed with the petitions pursuant to the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421, c. 307, sec. 1, 40 U. S. C. 258a, and estimated compensation in amounts substantially less than the contract prices was deposited in court (R. 15, 74, 137, 216; No. 151, R. 10).[3] Judgments were entered on the declarations of taking stating that title in fee simple absolute to each of the tracts had vested in the United States and ordering possession to be immediately surrendered to the United States (R. 18, 79, 140, 221; No. 151, R. 15).

In No. 148, the owners Edgar E. Albrecht and Geraldine Albrecht filed an answer to the petition

[3] The estimated compensation for 109 tracts was $920,085.35 less than the contract prices (R. 101–102).

denying that they, at the time the condemnation proceedings were instituted, had either title or possession of the property (R. 21). They alleged that they had, long prior to the institution of the proceedings, surrendered possession to the United States pursuant to the option contract between them and the Government; that they had fully performed all obligations of the contract by delivering a warranty deed dated February 6, 1941 to the Kansas City Title Company, authorized to act for the United States in that connection, and by procuring the required title certificates; and that the United States had delivered a check payable to them to the Title Company for transmission to them, but had withdrawn it before delivery and had never paid the purchase price (R. 21-23). They further alleged that, they having performed their part of the contract and the United States having taken and retained possession, the United States was estopped to abrogate its obligations under the contract or to proceed in the condemnation proceedings contrary to its duties and obligations under the contract, but was bound to carry on the proceedings in conformity with the provisions of the contract which were expressly applicable thereto (R. 23-24). They also asserted that if the Attorney General had approved the title there would be nothing to condemn, the cause would be moot and the court would have no jurisdiction because the United States was

the owner in possession of the property (R. 24). They prayed that the court enter its verdict, judgment and decree fixing the award for the land at $21,425, the agreed purchase price, and requiring the United States to deposit that sum in court to be disbursed pursuant to decree (R. 24). Albert W. Albrecht, Jr. and Virginia Albrecht, owners of an interest in the same tract and parties to the same option contract, answered separately, making similar allegations and closing with the same prayer (R. 25-29). No interest was sought at that time.

In No. 149, Edward J. Linnenbringer and Emma Linnenbringer answered, alleging the execution of the option contract with the Government on December 6, 1940, the delivery of a warranty deed which was accepted and recorded by the United States, and the taking of possession by the United States (R. 143–152). They denied the power and authority of the United States to acquire their property except pursuant to the contract and asserted that the court had no authority to appoint commissioners or take any other or further steps in the condemnation proceeding except to enter judgment awarding them the sum provided in the contract (R. 145, 151–152). Alleging that they had performed their part of the contract and that the United States had failed and refused to pay the consideration agreed upon, the Linnenbringers prayed that

judgment be entered for $34,000, the amount of the contract price, with interest at 6% from January 13, 1941, the date it was alleged that the deed was delivered and the United States took possession (R. 151–153).

In No. 150, the Pitmans filed an answer containing substantially the same allegations as the answer filed by the Linnenbringers in No. 149 and prayed that the court enter judgment fixing the award at the agreed price of $35,000 with interest at 6% from January 15, 1941, the date possession was taken, and ordering that sum to be deposited in court and distributed pursuant to the terms of the contract and judgment (R. 228–237).

In No. 151, the Olivers answered the petition for condemnation, denying that at the time of the institution of the condemnation proceedings they had either title or possession of the property and asserting that they had, long prior to the institution of the proceedings, surrendered possession to the United States pursuant to the option contract between them and the Government (R. 17–20, 25–26). They denied the authority of the United States to acquire the property in any other way than that designated in the contract and asserted that if the Attorney General had approved the title, there would be nothing to condemn, the cause would be moot and the court would have no jurisdiction to proceed since the United States was the owner in possession

(R. 18, 25–26). They further alleged that the United States was estopped to proceed contrary to its obligations under the contract and prayed for judgment in the amount of the contract price of $70,000 with interest at 6% from the date of the acceptance of the option by the United States and they sought a decree requiring the Government to deposit that sum with interest in court (R. 26).

In No. 155, the Q. W. S. S. Realty and Investment Company filed an answer alleging that the United States and the Company had entered into a valid contract for the sale of the land described in the petition for $52,000, that under the contract the Company had granted and the United States had taken and retained possession, and that pursuant to the contract, the Company had furnished a title certificate and delivered a warranty deed to the United States through its duly authorized agent and was willing to record the deed and furnish the final title certificate referred to in the contract (R. 85, 93). The Company alleged that the United States by taking title and possession was estopped to deny the validity of the contract or to condemn the land except for the contingency named in the contract, i. e., the non-approval by the Attorney General of the title, a contingency upon which the condemnation proceeding was not predicated. The Company further alleged that the condemnation proceeding

was unnecessary, illegal and void, because fee simple title was already vested in the United States and the United States was in possession (R. 94). It was prayed that the Court vacate and set aside the order and judgment on the Declaration of Taking, deny the petition for condemnation and discharge the Company with its costs (R. 95).

No further proceedings were had in these cases pending the litigation of the validity of the contracts in the *Muschany* case. When this Court held that the contracts were valid and binding upon the United States (*Muschany* v. *United States*, 324 U. S. 49), the Government moved in these proceedings for judgments fixing the owners' compensation for the takings in the amounts named in the contracts without interest (R. 30, 95, 154, 243; No. 151, R. 27–28) and paid into court the difference between the estimated compensation deposited when the declarations of taking were filed and the price agreed upon in the contracts (R. 34; No. 151, R. 52). Petitioners answered the Government's motions and again moved for judgments in the amount of the contract prices, four of them asking for interest at 6% on the contract prices from the date possession was alleged to have been taken to the making of the deposits with the declarations of taking and interest at 6% on the difference between the contract prices and the deposits from the date of the deposits until paid

(R. 32, 100, 156; No. 151, R. 29).[4] Petitioner in No. 150 did not ask for interest from the date possession was alleged to have been taken but only for interest at 6% on the difference between the contract price and the deposit from the date of the filing of the declaration of taking (R. 245).

The Weldon Spring condemnation cases were divided among three district judges. Motions and countermotions for judgments similar to those filed in these proceedings were filed in the others and the question of the allowance of interest on the contract prices was submitted to the three judges sitting together on April 4, 1945 (R. 37; No. 151, R. 31–46). Each of the judges ruled individually on the cases pending before him. Judge Hulen wrote an opinion concluding that interest should not be allowed on the amount of the contract price (60 F. Supp. 741) and entered judgment accordingly (No. 151, R. 47–52). Upon appeal by one of the landowners, petitioner in No. 151, the circuit court of appeals affirmed (No. 151, R. 77–85). Judge Moore, whose cases included Nos. 149 and 150, wrote an opinion concluding that interest was recoverable on the difference between the contract price and the estimated compensation deposited with the declaration of taking from the date of the filing of the declaration of

[4] Petitioner in No. 155 had previously sought to have the condemnation proceeding dismissed (see *supra* p. 10), but after this Court's decision in the *Muschany* case, *supra*, it amended its answer and sought judgment in the amount of the contract price (R. 98–100).

taking to the date of payment of the difference into court (R. 162; 61 F. Supp. 199). Judge Duncan, whose cases included Nos. 148 and 155, concurred in Judge Moore's opinion (R. 36). The United States appealed from four of the judgments entered in cases pending before Judges Moore and Duncan (R. 1, 55, 123, 197). The circuit court of appeals, stating that the cases were identical with No. 151 so far as any material facts were concerned, reversed on the authority of its decision in No. 151 with directions to the district court to enter judgment for the consideration stipulated in the contracts without interest (R. 294, 303–306).

The circuit court of appeals concluded that since the United States acquired the right to possession under the contracts, which neither provided for interest nor specified a time for payment, the settled rule denying the recovery of interest for delay by the United States in performing its contractual obligations precluded the payment of interest in these cases. It held that the constitutional and statutory provisions to the effect that just compensation includes compensation for delay in payment after there has been a taking of property were inapplicable since the instant cases were controlled as to the amount of recovery by the terms of the contracts (R. 302–303).[5]

[5] The remaining cases are being held in abeyance pending final decision in these test cases. In the *Muschany* and

SUMMARY OF ARGUMENT

I

The amount of compensation to be paid for the property condemned in these proceedings was fixed in accordance with the sums agreed upon in contracts entered into prior to the institution of the proceedings. The contracts gave the United States the right to possession of the property prior to payment of the agreed prices, but made no provision for the payment of interest. Consequently, interest cannot be recovered on the contract prices because, unless specifically agreed upon by contract or imposed by legislation, interest cannot be recovered on contractual claims against the Government even though there has been default in the payment of the principal.

II

Interest is allowed under the Fifth Amendment when property is taken for public use prior to payment only as part of "just compensation." It is allowed not as an "exception" to the rule that interest does not run on claims against the United States, but as a "good measure" of the sum necessary to produce the full equivalent of

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Andrews cases, the test cases as to validity of the contracts, the court below took the same position as to interest liability but denied the Government's application to be relieved of such liability on procedural grounds. *United States* v. *Muschany*, 156 F. 2d 196 (C. C. A. 8).

the value of the property paid contemporaneously with the taking. When the owner of property taken agrees in writing to the sum to be paid, the amount of compensation rests upon express contract and is binding on the parties to the contract whether or not the agreed sum represents "just compensation" within the meaning of the Constitution. "Just compensation" has never been determined in the cases at hand. *Muschany* v. *United States,* 324 U. S. 49, 54–55. The owners could have acquiesced in the Government's attempt to have just compensation ascertained. In that event they would have been entitled to interest as part of just compensation. Instead, they insisted upon recovering their contract prices. Having done so, they may not reject the contracts insofar as they are unfavorable and rely upon the constitutional guarantee of just compensation to obtain what their contracts deny them. The case of *Danforth* v. *United States,* 308 U. S. 271, is not to the contrary since, in that case, the contracts did not contemplate, or provide for, possession prior to payment of the award. This Court merely held that interest would not run until a taking had occurred. Here the contracts gave the United States the right to possession and that right had been exercised. The case of *United States* v. *Baugh,* 149 F. 2d 190 (C. C. A. 5) is not sound and, in any event, is distinguishable on the ground that it was based upon the

construction of a stipulation, the contents of which differ from the contracts involved here and which was entered into under different circumstances.

III

The Declaration of Taking Act of February 26, 1931, 46 Stat. 1421–1422, c. 307, 40 U. S. C. 258a–258e is not a statutory exception to the rule denying interest against the sovereign, but permits interest only as "part of the just compensation." By the terms of the Act, interest is to be paid on compensation ascertained and awarded in the condemnation proceeding. Here, compensation was fixed by an agreement entered into prior to the condemnation proceding and just compensation was not determined. Consequently, interest cannot be recovered under that Act.

ARGUMENT

I

PETITIONERS WERE NOT, UNDER THEIR CONTRACTS, ENTITLED TO RECOVER INTEREST UPON THE PRICES FIXED IN THE CONTRACTS

It is well established that in the absence of a provision in the contract or a statute specifically subjecting the Government to the liability, interest does not run on contractual claims against the Government even though there has been default in the payment of the principal. *Smyth* v. *United States*, 302 U. S. 329, 353; *United States* v. *Goltra*,

312 U. S. 203, 207; *Boston Sand Co.* v. *United States,* 278 U. S. 41, 47; *United States* v. *North American Co.,* 253 U. S. 330, 336; *United States* v. *North Carolina,* 136 U. S. 211, 216; *Angarica* v. *Bayard,* 127 U. S. 251, 260; *Harvey* v. *United States,* 113 U. S. 243, 248–249.

The landowners in these cases entered into contracts to sell their properties to the United States at agreed prices. The contracts granted to the United States the right of immediate possession of the lands.[6] The contracts contemplated that they would be carried out in one of two ways, either by the execution of a warranty deed by the owner or by the institution of condemnation proceedings by the United States.[7] In the

[6] The contracts provided as follows (R. 28, 92, 150, 241; No. 151, R. 37):

> The undersigned hereby grants to the Government the right of immediate occupancy and use of the land for any purpose whatsoever from and after the acceptance by the Government of this option, which acceptance shall be within thirty (30) days after date hereof, until such time as said land is conveyed to the Government by the undersigned, the title approved by the Attorney General of the United States as required by law, and the agreed purchase price paid by the Government to the undersigned.

[7] The contracts provided (R. 29, 92–93, 151, 242; No. 151, R. 37–38):

> If for any reason the title to the land is not approved by the Attorney General, the Government will proceed to acquire the land by condemnation proceedings instituted in the District Court of the United States in which said property is located, under a consent verdict fixing the award at the agreed valuation and in accordance

latter event, the right of occupancy and use was to continue uninterrupted during the pendency of the condemnation proceedings.[8] But even though the United States was given the right of possession as soon as the contracts were accepted by it, immediate payment was not contemplated since the agreed prices were not to be paid until the deeds were executed and certificates showing title to be vested in the United States were furnished or condemnation proceedings were instituted as provided for in the contracts (R. 28–29, 92–93, 150–151, 241–242; No. 151, R. 37). No time was fixed within which the agreed prices should be paid or condemnation proceedings instituted. In view of the many parcels involved it was obvious that payment would be delayed while title certificates were being secured and the titles examined by the Government. And, as the court said in *Coggeshall* v. *United States*, 95 F. 2d 986, 989, 990 (C. C. A. 4): "The statutory safeguards that have wisely been thrown around the expendi-

with all the terms and provisions of this option and will upon filing its petition in such proceedings deposit said agreed purchase price with the clerk of said court, same to be disbursed by said officer pursuant to the decree entered in such condemnation proceedings.

[8] The provision of the contracts was as follows (R. 29, 93, 151, 242; No. 151, R. 38):

> The occupancy and use of the land by the Government as granted aforesaid shall not be interrupted, but shall continue to be enjoyed by the Government throughout the pendency of said condemnation proceedings.

ture of public funds are such as cause unavoidable delay in the making of such disbursements." Again in *Wachovia Bank & Trust Co.* v. *United States*, 98 F. 2d 609, 611 (C. C. A. 4) the court said: "Action on the part of the Government officials in matters of this kind is necessarily somewhat slow. *Coggeshall* v. *United States, et al.*, 4 Cir., 95 F. 2d 986. The respondents knew these facts and entered into the option with the full knowledge of them and, as there was no unnecessary delay, are bound." Moreover, the provision of petitioners' contracts that the agreed purchase price should be deposited in court when condemnation proceedings were instituted did not guarantee immediate payment thereof to petitioners because it was unlikely that the court would have dispersed such funds to petitioners while a title dispute remained unsettled. Cf. *United States* v. *Certain Parcels of Land*, 40 F. Supp. 436 (D. Md.). All of these factors show that considerable delay in payment was inevitable, and must have been contemplated by all parties. Nevertheless, no provision was made for interest or for computation of compensation in some other manner for the use of the property between the time possession was taken and payment was made. Since the parties are presumed to know the well settled rule that interest is not payable on contracts with the United States unless specifically provided for, it is plain that they did not intend that interest should be paid. And, in any event,

under that rule, petitioners are not entitled to interest since the contracts did not specifically provide for it.

All of the courts below which have passed on this question have agreed that interest could not be recovered under the contracts. Judge Moore, who held that petitioners were entitled to interest for other reasons, stated (R. 169) that "Had the contracts been performed in the manner contemplated on their face they would have needed no interest and been entitled to none." Petitioners' contentions rest, as did the decisions of two of the district courts (R. 169, see R. 37), upon the fact that the Government breached one of the terms of the contract by delaying the deposit in court of the entire agreed purchase prices until after this Court had sustained the validity of the contracts. We submit that this delay in making payment cannot warrant the imposition of interest liability on the United States. As was held in *United States* v. *Stott*, 140 F. 2d 941 (C. C. A. 8), an unreasonable delay in paying the agreed price might have justified termination of the contracts. But as all of their pleadings show—both their answers originally filed and their amendments and motions filed after this Court's decision in the *Muschany* case, *supra*, pp. 8–12, the landowners, far from electing to rescind the contracts, have insisted upon their performance. Having insisted upon performance, they cannot also recover interest.

The argument that the Government's delay in depositing the agreed price entitles petitioners to interest is in direct conflict with the rule (*supra*, pp. 16–17) that "interest does not run upon claims against the Government even though there has been default in the payment of the principal." *Smyth* v. *United States*, 302 U. S. 329, 353. As the court said in *United States* v. *3.25 Acres of Land, Etc., in Seneca County*, 53 F. Supp. 884, 886 (W. D. N. Y.) in applying this rule in a condemnation proceeding in which the owners had agreed with the United States upon the amount of compensation:

> * * * The amount agreed upon was $17,000, not $17,000 plus interest from the date of the taking. Nor may the Government be penalized for the delay in payment, even if responsible for it. "Interest, when not stipulated for by contract or authorized by statute, is allowed by the courts as damages for the detention of money or of property, or of compensation, to which the plaintiff is entitled; and, as has been settled on grounds of public convenience, is not to be awarded against a sovereign government unless its consent to pay interest has been manifested by an act of its legislature, or by a lawful contract of its executive officers. * * *" *United States* v. *North Carolina*, 136 U. S. 211, 216, 10 S. Ct. 920, 922, 34 L. Ed. 336.

Thus, whatever the cause of the delay, the Government is not obligated to pay interest for the delay in payment of principal. It should be noted, however, that all of the courts below, even those which held the Government liable for interest, recognized that the four year delay in payment was not due to bad faith or unreasonableness on the part of the Government but simply to the necessary delay incident to a final settlement of the question whether the contracts were valid. As Judge Moore stated (R. 179): "Great skill and diligence has been exercised by those [the Government's] agents, and the Court believes that their efforts were certainly not unreasonable in the light of the contrary opinions arrived at by the various jurists to whom the issues have so far been presented."

II

THE OBLIGATION OF THE UNITED STATES TO PAY INTEREST AS PART OF "JUST COMPENSATION" UNDER THE FIFTH AMENDMENT WHEN PROPERTY IS TAKEN IN EXERCISE OF THE POWER OF EMINENT DOMAIN IS NOT APPLICABLE HERE

The United States, when it instituted these proceedings, sought to repudiate the contracts and have just compensation determined in accordance with the requirements of the Fifth Amendment to the Constitution. The landowners resisted, insisting that the Government was obliged to pay the contract prices (R. 21–29, 84–95, 143–153, 228–242;

No. 151, R. 17–26). The landowners' contentions were eventually sustained and the Government held liable for the contract prices and those amounts have been paid. Nevertheless petitioners, relying upon the fact that these cases are condemnation proceedings, seek to invoke the guaranties of the Fifth Amendment solely for the purpose of recovering interest. But this position ignores the fact that "just compensation" as provided for in the Fifth Amendment has never been determined. Rather, as the court below stated (R. 302) these proceedings have been controlled, as to the amount of recovery, by the terms of the purchase contracts under which no interest is payable. Certainly petitioners "are not entitled to insist upon provisions of the contract favorable to them while rejecting others which are unfavorable" (R. 302). Under the circumstances of these cases, petitioners were presented a choice between two courses of action—the first, to insist upon receiving the prices fixed in the contracts—the second, to acquiesce in the Government's attempted repudiation of the contracts and thereby to receive the "just compensation" guaranteed by the Constitution. It is plain that petitioners could not do both, since the two possibilities were inconsistent and mutually exclusive alternatives.

The "just compensation" guaranteed by the Fifth Amendment has a clearly defined meaning when applied in condemnation proceedings. First, the criterion for determining just compensation is

the "fair market value" of the property taken. *United States* v. *Petty Motor Co.*, 327 U. S. 372, 377; *United States* v. *Miller*, 317 U. S. 369, 373–374. Second, where the taking precedes payment, "just compensation" is comprehensive, embracing not only the value of the property at the date of the taking, but also "such addition as will produce the full equivalent of that value paid contemporaneously with the taking." *Seaboard Air Line Ry.* v. *United States*, 261 U. S. 299, 306. Or as was stated in *Shoshone Tribe* v. *United States*, 299 U. S. 476, at page 496:

> * * * The claimant's damages include such additional amount beyond the value of its property rights when taken by the Government as may be necessary to the award of just compensation, the increment to be measured either by interest on the value or by such other standard as may be suitable in the light of all the circumstances.

Interest is merely a "good measure" by which to ascertain one element of the just compensation required by the Fifth Amendment. *Seaboard Air Line Ry.* v. *United States*, 261 U. S. 299, 306; *Brooks-Scanlon Corp.* v. *United States*, 265 U. S. 106, 123; *Jacobs* v. *United States*, 290 U. S. 13, 17; cf. *Shoshone Tribe* v. *United States*, 299 U. S. 476, 496. As this Court said in *United States* v. *Klamath Indians*, 304 U. S. 119, 123:

> Nor is it quite accurate to say that interest as such is added to value at the time of the

> taking in order to arrive at just compensation subsequently ascertained and paid. The established rule is that the taking of property by the United States in the exertion of its power of eminent domain implies a promise to pay just compensation, i. e., value at the time of the taking plus an amount sufficient to produce the full equivalent of that value paid contemporaneously with the taking. *Jacobs* v. *United States*, 290 U. S. 13, 16–17, and cases cited.

Contrary to the view of two of the trial courts (R. 164, 37), the "allowance of interest in eminent domain cases is only an *apparent* exception [to the rule forbidding interest], which has its origin in the Constitution." *Smyth* v. *United States*, 302 U. S. 329, 353 (italics supplied). Thus, when the United States deprives a landowner of his property by the exercise of the power of eminent domain and the parties do not agree as to value, the Constitution guarantees him the right to "just compensation". That includes compensation, usually measured by interest, for failure to make payment contemporaneously with the taking. No agreement to pay is necessary. But when the owner has voluntarily agreed in writing with the United States as to the value, the amount of compensation rests on express contract. The distinction was well stated in *United States* v. *3.25 Acres of Land, Etc., in Seneca County*, 53 F. Supp. 884 (W. D. N. Y.). The court said (pp. 885–886):

> * * * The right to just compensation for property taken and the right to an award for an amount expressly agreed upon are inconsistent rights. The former rests upon equitable principles and comprehends that the owner shall be put in as good a position pecuniarily as he would have been if his property had not been taken. *Seaboard Air Line R. Co.* v. *United States,* 261 U. S. 299, 304, 43 S. Ct. 354, 67 L. Ed. 664. The latter rests upon express agreement regardless of whether the owner's position pecuniarily is worse or better than if he had not parted with his property.

The contradiction between these two rights appears from the fact that when an express agreement is involved, the Government is bound to pay the agreed amount even though it might be able to show that the constitutional requirement of just compensation would be satisfied by a smaller sum. Cf. *Danforth* v. *United States,* 308 U. S. 271, 282–283. So also, the owner is bound by an agreement to convey the property to the United States for a price which might be less than the amount judicially determined to be just compensation. Cf. *United States* v. *Greer Drainage District,* 121 F. 2d 675 (C. C. A. 5). Nothing in the Fifth Amendment prohibits the parties from agreeing upon the amount to be paid or relieves them from the obligation of such a contract.

In the instant cases, "just compensation" has never been determined. The contract prices do

not represent solely an estimated value for the lands, but include such items as commissions to McDowell, the Government's agent, to secure the options and the cost of procuring title certificates. *Muschany* v. *United States*, 324 U. S. 49, 56. Moreover, it has been the position of the Government that because of over-valuation or because of the inclusion of non-compensable items, the contract prices in the Weldon Spring project were greatly in excess of fair market value.[9] See *United States* v. *Muschany*, 139 F. 2d 661, 665–666 (C. C. A. 8). But as this Court pointed out in *Muschany* v. *United States*, 324 U. S. 49, 54–55:

> The two cases were decided [in the trial courts] in favor of the validity of the contracts and the compensation was fixed at the price stated in the contract without revaluation. Consequently there was no occasion for the trial courts to determine whether valuation measured by just compensation would have varied from the agreed price. The Government makes no objection to this manner of determining compensation if the accepted options

[9] The Government's total estimate of just compensation for all of the tracts in which condemnation proceedings were filed and the validity of the contracts attacked was $920,085.35 less than the total contract prices for those tracts (see R. 101–103). This difference was due, not as petitioner Linnenbringer asserts (Pet. Br. No. 149, p. 29) simply to a mistake in estimating just compensation, but to the fact, as the Government contended, that the contract prices far exceeded just compensation.

(contracts) are valid. Compare *Danforth* v. *United States*, 308 U. S. 271, 282.

Thus, the majority of this Court has recognized that the agreed prices do not necessarily represent the just compensation guaranteed by the Constitution and, as Mr. Justice Black pointed out in the dissenting opinion at page 69, the amounts agreed upon, even in the absence of a finding of fraud, might "well be far in excess of what is 'just compensation.'"

Under the circumstances of these cases, the landowners as we have shown *supra*, p. 23, had an election to rely either upon the Constitutional guarantee of the Fifth Amendment or upon their contracts with the Government. They could have acquiesced in the Government's attempt to have just compensation determined or they might have taken steps to terminate the contracts at any time while the Government was trying to repudiate them. Cf. *United States* v. *Stott*, 140 F. 2d 941 (C. C. A. 8). If they had done so they would have been entitled to interest on the value of the property from the date of taking to the date of payment, but the sum on which it would have been allowed would have been determined in accordance with the usual concept of just compensation, i. e., market value fairly determined. Instead, they insisted upon recovering the contract prices. They cannot now invoke a portion of the Constitutional guarantee of just compensation to obtain interest while at the same time rejecting the

most important part—that just compensation is measured by market value fairly determined.

Petitioner Linnenbringer emphasizes[10] the fact that after this Court's decision in the *Muschany* case, the Government moved for entry of judgment in the amount of the contract prices without interest apparently as indicating that the awards were fixed in the amount of contract prices at the insistence of the Government. However, the other petitioners concede that it was at their insistence that the awards were so fixed (Pets. Br. 155, pp. 22, 25; Pets. Br. 151, p. 17). In their original answers all of the landowners insisted upon receiving the contract prices (see *supra*, pp. 6–11) and this position was maintained by Linnenbringer and the other landowners in their amendments and motions filed after the *Muschany* decision (see *supra*, pp. 11–12). As this Court noted (324 U. S. at p. 55), the Government recognized, in the *Muschany* case, that if the contracts were valid the landowners were entitled to have the awards fixed at the contract prices in the condemnation proceeding.[11] Thus, the Government, when it moved for entry of the awards in the contract amounts, was simply acting in accordance with this Court's decision in the *Muschany* case

[10] Pets. Br. No. 149, pp. 9, 27, 28, 32, 37, 49, 52.

[11] To deny the landowners a right to rely on their contracts in the condemnation proceedings would seem to lead to a multiplicity of suits because, in that event, the landowners could, in suits on the contracts, recover any deficiences of the awards below the contract prices.

and was notifying the many landowners of that fact.[12] These motions did not alter the fact, as stated by the court below (R. 302) that "By their successful defense of the validity of the purchase contract, the landowners converted the condemnation proceedings from an ordinary adversary proceeding into one controlled, as to the amount of their recovery, by the terms of the purchase contract."

Upon the decision of this Court in the *Mu[illegible]any* case that the contracts were valid, the Government might have dismissed the condemnation proceedings and settled the matter under the contracts on the ground that, as alleged by many of the landowners, there was nothing to condemn since they had conveyed a good title pursuant to the contracts (see *supra*, pp. 6–11).[13] It is clear that if

[12] Because of the many parties involved and the experience of Government attorneys in condemnation proceedings, the United States takes the leading part in presentation to the court of formal motions, judgments, etc., regardless of whether it agrees with the rulings upon which they are based. Cf. *United States* v. *111,000 Acres of Land in Polk and Highlands Counties*, 155 F. 2d 683 (C. C. A. 5).

[13] Under the declaration of taking procedure, the Government cannot abandon a proceeding after title has passed pursuant to a declaration of taking. *United States* v. *Sunset Cemetery Co.*, 132 F. 2d 163 (C. C. A. 7). It was the Government's position that since the contracts were invalid no title passed pursuant thereto; hence the declaration of taking would have vested title in the United States. However, the contracts having been held valid it would seem that, as some of the landowners alleged, their titles had passed under the deeds, in which case the declaration of taking did not pass

the Government had so proceeded there would be no basis for the present claim of petitioners for interest. It was much more reasonable, however, to settle the entire matter in the pending condemnation procedings and no one objected to such procedure. Cf. *United States* v. *San Geronimo Development Co.*, 154 F. 2d 78 (C. C. A. 1), certiorari denied October 14, 1946, No. 143, this Term. This was advantageous to the landowners since it avoided the necessity of bringing a new suit to settle the interest question. The fact that this procedure, of settling the entire matter in the condemnation case, was selected should not increase the Government's liability.

There is nothing in this Court's decision in *Danforth* v. *United States*, 308 U. S. 271, so vigorously invoked by petitioners,[14] to support the notion that they are entitled to rely upon the favorable portions of the contract while rejecting others which are unfavorable, nor does that decision tend to indicate any error in the holding of the court below (R. 301–302) that, if the contracts are to control the question of compensation, they must be

such title and the proceedings could, therefore, be abandoned at any time. See *O'Connor* v. *United States*, 155 F. 2d 425 (C. C. A. 9); *Moody* v. *Wickard*, 136 F. 2d 801 (App. D. C.), certiorari denied, 320 U. S. 775. This is not to say that the condemnation proceedings would not be an appropriate means of settling title disputes and acquiring any outstanding interests. See *United States* v. *Carmack*, this Term, No. 40.

[14] Pets. Br. No. 149, pp. 32–35, 50; Pets. Br. No. 151, pp. 15–17; Pets. Br. No. 155, pp. 17–18.

considered in their entirety. Factually, the *Danforth* case presented an entirely different situation from the instant cases and, indeed, the claim for interest was denied. The agreement in that case was not, as were petitioners' contracts, an agreement for sale of property at fixed prices, the Government being authorized to take possession immediately; rather it was simply a stipulation fixing the amount of the award if the Government should condemn a flowage easement. This Court merely held that as there had been no taking of such an easement, interest was not recoverable. Since the contracts in the *Danforth* case did not contemplate possession and use prior to payment, the price fixed could not have included consideration for such possession and use. On the contrary, here the contract price represented consideration both for the land and for its exclusive possession and use from the effective date of the contract until payment (R. 302; see *supra*, p. 19).[15] Finally, the holding of this Court in the *Danforth* case—that giving the contract effect in the condemnation pro-

[15] Petitioner in No. 155 (Q. W. S. S. Realty and Investment Company) argues that the consideration for possession of the property was not the sum designated in the option as the purchase price, but the $1.00 paid by the United States for the option prior to its acceptance by the Government (Pets. Br. No. 155, pp. 5, 11, 13–14, 20–22). This is clearly incorrect since the right of possession was not granted until the option was accepted by the United States (R. 92) and thereby converted into a bilateral contract, the consideration for which was the agreement by the United States to pay the sum designated as the purchase price.

ceedings does not convert that proceeding into a suit against the United States for enforcement of the contract (308 U. S. at 282–283)—does not mean that only portions of the contract are to be given effect or that the essential nature of petitioners' claims can be ignored.

Petitioners also rely upon *United States* v. *Baugh*, 149 F. 2d 190 (C. C. A. 5), contending that their contracts should be construed in the same way as the stipulations in the *Baugh* case.[16] In that case, on August 24, 1942, the United States instituted condemnation proceedings and took possession of the lands to be acquired under Title II of the Second War Powers Act of March 27, 1942, 56 Stat. 177, c. 199, sec. 201, 50 U. S. C. App. (Supp. V) 632. Several months later, in January and February 1943, the owners entered into stipulations agreeing to certain sums as just compensation and authorizing the entry of judgment in those amounts. The stipulations stated that they were made to expedite the vesting of title in the United States and the payment of just compensation to the owners without further proceedings. However, the United States did not deposit the agreed amounts in court until seven or eight months later in August, 1943, a delay which the court characterized as unreasonable. The court held that the landowners were entitled to interest

[16] Pets. Br. No. 149, pp. 40–46; Pets. Br. No. 151, pp. 21–22; Pets. Br. No. 155, p. 25.

from the date the stipulations were signed to the date of payment. The reasoning of the opinion is, we submit, unsound. As we have shown (*supra*, pp. 23–25) the term "just compensation" as used in the Fifth Amendment embraces not only fair market value of the property taken but an amount, usually measured by interest, to compensate for the delay between date of taking and date of payment. The court in the *Baugh* case recognized this principle and did not indicate that the parties used the term "just compensation" in a different sense in the stipulations. Nevertheless, it stated that the landowners were entitled to receive interest as well as just compensation. Certainly, if the term "just compensation" was used in the constitutional sense, it included interest as well as the other elements embraced in the constitutional guarantee, and the court was not warranted in imposing additional liability by way of interest on the Government.

In any event, as all the courts below have recognized (R. 303, 175, 36) the *Baugh* decision is not in point here. At the time the stipulations were executed there had already been a taking under the power of eminent domain and, rather than being contracts of purchase, the agreements simply settled the amount of compensation. The *Baugh* decision rested largely on the thought that the landowners expected that payment would be made promptly and there would be no indefinite

or unreasonable delay.[17] On the contrary, petitioners could not have expected payment immediately upon acceptance of their options (see *supra*, pp. 18–19). Moreover, petitioners simply executed a contract for the sale of land at a fixed price. The parties did not purport to be settling the amount of an existing obligation to pay just compensation, as in the *Bough* case. The instant cases do not present a situation of "implied waiver" of one of the elements included in just compensation (see e. g. Pets. Br. No. 149, p. 44). As we have shown (*supra*, p. 23) petitioners had a choice between two inconsistent rights. Having rested their claims upon the sale contracts, the rights which they might have had to claim just compensation became immaterial.

III

THE DECLARATION OF TAKING ACT DOES NOT GIVE PETITIONERS A RIGHT TO INTEREST

Upon instituting the condemnation proceedings, the United States filed a declaration of taking and deposited estimated compensation in court under the authority of the Declaration of Taking Act of February 26, 1931, 46 Stat. 1421–1422, c. 307, 40 U. S. C. 258a–258e (R. 15, 74, 137, 216; No. 151, R. 10). Petitioners, while recognizing that the Act simply restates the constitutional

[17] Although the stipulations were intended to expedite the disbursement of funds, no reason appeared why the payment was delayed for seven months.

requirement of just compensation, nevertheless contend that they are entitled to interest on the contract prices by virtue of that Act.[18] As we have shown (*supra*, pp. 22–35) petitioners are not entitled to recover interest on the contract prices under the "just compensation" clause of the Fifth Amendment. It is equally clear that the Declaration of Taking Act does not enlarge the obligations of the United States beyond that imposed by the Constitution so as to permit the recovery of interest by petitioners.

The Declaration of Taking Act (*infra*, pp. 47–47) provides that upon the filing of a declaration of taking and the deposit of estimated compensation in court title to the property shall vest in the United States and:

> * * * the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court.

[18] Pets. Br. No. 149, pp. 24–31; Pets. Br. No. 151, p. 13; Pets. Br. No. 155, p. 17.

Thus, it will be observed that the Declaration of Taking Act is not a statutory exception to the rule that interest cannot be recovered against the United States, but merely an adoption in statutory form of the rule long recognized by the courts in allowing interest as part of just compensation where the Government has taken possession of the property in advance of payment of the full amount of the award. A uniform rate of interest was established as the "good measure" of the sum to be added to the value of the property to produce the full equivalent of value "paid contemporaneously with the taking," whereas previously the rate had varied in different states according to the legal rates of interest. Moreover, the Declaration of Taking Act does not preclude the parties from fixing the amount of compensation either before or after the institution of the condemnation proceeding. As has been pointed out (*supra*, pp. 22–23), petitioners have elected to stand on the contracts and have opposed having "just compensation" ascertained in the condemnation proceeding as contemplated by the Act. The very terms of the Act defeat petitioner's contention because rather than providing for interest upon any agreed price it specifies that "compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest * * *."

Petitioners contend (Pets. Br. No. 151, pp. 25–26) that the fact that title vests in the United States upon the filing of a declaration of taking confers a benefit on the United States which estops it to deny the alleged statutory obligation to pay interest and it is asserted that petitioners were thereby placed at a disadvantage. But this ignores the fact that petitioners had already parted with their titles insofar as it was within their power to do so by entering into the contracts of sale and by the execution of deeds which they have never repudiated—a fact which petitioners not only recognized but vigorously asserted in answering the Government's petitions to condemn (See *supra*, pp. 6–11). The United States already had possession of the lands under the contract. The passage of technical legal title was neither a benefit to the United States nor a detriment to the owner such as would give rise to an estoppel. Furthermore, the alleged estoppel would not support petitioners' claims since, as we have already stated, interest is allowed under the Declaration of Taking Act merely as a part of just compensation, which has never been determined. Petitioners seek to avoid the effect of this fact by suggesting that the contracts simply fixed the value of the lands. But as we have shown the contract prices included the consideration for delay in payment while the Government was in possession rather

than the land value alone to which a jury verdict would have been limited.[19]

Petitioner Linnenbringer contends (1) that the jurisdiction of the court was invoked under the Declaration of Taking Act, and (2) that there was a "taking" under that Act and that, therefore, interest should be paid pursuant to that Act (Pets. Br. No. 149, pp. 24–39). But, in the first place, the jurisdiction of the court rested upon the Act of July 2, 1917, as amended, Appendix *infra*, p. 43, and the General Condemnation Act of August 1, 1888, 25 Stat. 357, 40 U. S. C. 257 (R. 10, 65, 131, 206; No. 151, R. 5). As this Court pointed out in *Catlin* v. *United States*, 324 U. S. 229, 240, the Declaration of Taking Act did not provide for a new condemnation proceeding. It simply afforded a process ancillary or incidental to suits brought under other statutes. Secondly, in the present cases, there was no "taking" when the declaration of taking was filed. This is so because, as we have shown (*supra*, pp. 17–18) possession was taken under the provisions of the contracts and not under the power of eminent domain. And in an event, under the eminent domain power, it is the physical taking of possession, not the later filing of a declaration of taking, which constitutes the "taking" for the

[19] In an ordinary condemnation proceeding the jury would simply find the fair market value of the land at the time of the taking. The interest would be added to that award by the court as a matter of law.

purpose of determining compensation and fixes the date from which interest is computed. In *11,000 Acres of Land, More or Less* v. *United States*, 152 F. 2d 566, 568–569 (C. C. A. 5), certiorari denied April 29, 1946, No. 979, October 1945 Term, the court held:

> We regard it as well settled that, either where no declaration of taking is filed or where, as here, the declaration of taking is filed on a date subsequent to the actual passing of possession, the market value of the property taken should be determined as of the date possession was acquired. *United States* v. *Lynah*, 188 U. S. 445, 23 S. Ct. 349, 47 L. Ed. 539; *Seaboard Air Line Ry. Co.* v. *United States*, 261 U. S. 299, 43 S. Ct. 354, 67 L. Ed. 661; *United States* v. *Rogers*, 255 U. S. 163, 41 S. Ct. 281, 65 L. Ed. 566; Cf. *Olson* v. *United States*, 292 U. S. 246, 54 S. Ct. 704, 78 L. Ed. 1236; *United States* v. *6.87 Acres of Land*, 2 Cir., 147 F. 2d 351.

Cf. *Bank of Edenton* v. *United States*, 152 F. 2d 251 (C. C. A. 4). Relying upon this Court's citation of the Declaration of Taking Act in the *Danforth* case, petitioner Linnenbringer (Br. No. 149, p. 50) asserts that Congress, in that statute, defined a particular act as the taking which would give rise to the right to interest and much of the brief's discussion apparently refers to the date of filing the declaration of taking as the "date of taking" (Br. 35, 39). But the opinion in the *Danforth* case was not considering a situation

where the taking had occurred in actuality prior to invocation of the Declaration of Taking Act. Clearly, in such event, the physical occupancy of the property constitutes the taking. Petitioner Linnenbringer, although recognizing that such is the true date of taking, seeks to ignore it on the ground that now he is only claiming interest from the date the declaration of taking was filed (Br. No. 149, pp. 25–26). Certainly the fact that this petitioner is not now claiming interest between the date of taking possession and the date the declaration of taking was filed does not change the date of taking or enable petitioners to avoid the effect of their contracts. As we have shown (*supra*, p. 19), the contract prices included compensation for the fact that the Government took possession of the property prior to payment.[20] Thus there has been no "taking" under the Declaration of Taking Act.

This is not, as petitioner Linnenbringer asserts (Br. 28) a case where the very purpose of the Declaration of Taking Act is frustrated. On the

[20] In the trial courts, some of the petitioners sought to recover interest from the date of possession or the date of acceptance of the options (see *supra*, pp. 9–10). None of the trial courts allowed interest for a period earlier than the date of filing the declarations of taking (see *supra*, pp. 12–13). The petitioners who prevailed in the trial courts did not cross-appeal on this point. While petitioner Oliver made the contention in the court below (No. 151, R. 71), it is not clear that he is still pressing this view. In any event, it must be rejected on the same principles which require the disallowance of the other petitioners' lesser claims for interest.

contrary, petitioners might have relied upon the Act and the constitutional requirement of just compensation. Instead, as petitioner Oliver recognizes (Br. No. 151, p. 17), they elected to proceed under the contracts which fixed the total amount to be paid including compensation for delay in payment. Having followed that course, petitioners may not, we submit, also take advantage of a portion of the constitutional guarantee of just compensation.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the judgments of the circuit court of appeals should be affirmed.

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APPENDIX

The pertinent provisions of the Act of July 2, 1917, 40 Stat. 241, c. 35, as amended by the Act of April 11, 1918, 40 Stat. 518, c. 51, 50 U. S. C. 171 are as follows:

> [* * * the Secretary of War may cause proceedings to be instituted in the name of the United States, in any court having jurisdiction of such proceedings for the acquirement by condemnation of any land, temporary use thereof or other interest therein, or right pertaining thereto, needed for the site, location, construction, or prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds and the manufacture of explosives and other munitions of war and for the development and transmission of power for the operations of such plants; such proceedings to be prosecuted in accordance with the laws relating to suits for the condemnation of property of the States wherein the proceedings may be instituted: *Provided*, That when the owner of such land, interest, or rights pertaining thereto shall fix a price for the same, which in the opinion of the Secretary of War shall be reasonable, he may purchase or enter into a contract for the use of the same at such price without further delay: * * * *And provided further*, That when such property is acquired in time of war, or the imminence thereof, upon the filing of the peti-

tion for the condemnation of any land, temporary use thereof or other interest therein or right pertaining thereto to be acquired for any of the purposes aforesaid, immediate possession thereof may be taken to the extent of the interest to be acquired and the lands may be occupied and used for military purposes * * *.

The Declaration of Taking Act of February 26, 1931, 46 Stat. 1421–1422, c. 307, 40 U. S. C. 258a–258e, reads as follows:

(SEC. 1) * * * in any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right-of-way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto—

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States, and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon

which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable.

SEC. 2. No appeal in any such cause nor any bond or undertaking given therein shall operate to prevent or delay the vesting of title to such lands in the United States.

SEC. 3. Action under this statute irrevocably committing the United States to the payment of the ultimate award shall not be taken unless the Chief of the executive department or agency or bureau of the Government empowered to acquire the land shall be of the opinion that the ultimate award probably will be within any limits prescribed by Congress on the price to be paid.

SEC. 4. The right to take possession and title in advance of final judgment in condemnation proceedings as provided by this Act shall be in addition to any right, power, or authority conferred by the laws of the United States or those of any State or Territory under which such proceedings may be conducted, and shall not be construed as abrogating, limiting, or modifying any such right, power, or authority.

SEC. 5. In any case in which the United States has taken or may take possession of any real property during the course of condemnation proceedings and in advance of final judgment therein and the United States has become irrevocably committed to pay the amount ultimately to be awarded as compensation, it shall be lawful to ex-

pend moneys duly appropriated for that purpose in demolishing existing structures on said land and in erecting public buildings or public works thereon, notwithstanding the provisions of section 355, of the Revised Statutes of the United States: *Provided,* That in the opinion of the Attorney General, the title has been vested in the United States or all persons having an interest therein have been made parties to such proceeding and will be bound by the final judgment therein.

U. S. GOVERNMENT PRINTING OFFICE: 1948

SUPREME COURT OF THE UNITED STATES

Nos. 148, 149, 150, 151 AND 155.—OCTOBER TERM, 1946.

Edgar S. Albrecht and Geraldine Albrecht, His Wife, et al., Petitioners, 148 *v.* The United States of America.	
Edward J. Linnenbringer, Petitioner, 149 *v.* The United States of America.	
Dennis B. Pitman and May Dell Pitman, Petitioners, 150 *v.* The United States of America.	On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.
A. Ray Oliver, Executor of the Estate of Lola Castlio Oliver, Deceased, et al., Petitioners, 151 *v.* The United States of America.	
Q. W. S. S. Realty and Investment Company, Petitioner, 155 *v.* The United States of America.	

[February 3, 1947.]

MR. JUSTICE BLACK delivered the opinion of the Court.

The question here is whether the Government is obligated to pay interest in connection with the following land purchase arrangements and condemnation proceedings. The Government made separate contracts with the petitioners to buy certain lands from them to be used for a

public purpose. The contracts stipulated a purchase price to be paid at an indefinite future time when certain conditions had been fulfilled.[1] They also granted the Government the right to immediate possession. Later the Government questioned the validity of the contracts and attempted to rescind them on the ground that by reason of fraud and other things the contract prices were grossly excessive and represented far more than the "just compensation" required by the Fifth Amendment. It filed condemnation proceedings in District Courts under 40 Stat. 241, as amended, 50 U. S. C. § 171, asking the Courts to fix "just compensation" after hearing evidence on that subject. It also filed a declaration of taking under 46 Stat. 1421, 40 U. S. C. § 258a, at the same time depositing in the Courts sums of money, substantially less than the contract prices, which it estimated to be the true "just compensation" for the property taken. The Courts then entered orders divesting the property owners of all title and vesting it in the Government. A companion case in which a District Court held an identical contract valid was appealed and eventually reached this Court. Prior to and pending this appeal these petitioners vigorously asserted the validity of the terms of the contracts which fixed the agreed prices for transfer of possession and title to their properties. Several years later this Court upheld the validity of the identical contract in the companion case.[2] Thereupon the Government, complying with that decision, paid the full contract purchase prices into the

[1] The first contract condition as to payment was that it should be made upon conveyance of a good and merchantable title. The second was that if "for any reason" the Attorney General did not approve the title, the Government could obtain a good title by condemnation proceedings in an appropriate district court, in which event the agreed compensation was to be deposited in court.

[2] *Muschany* v. *United States*, 324 U. S. 49.

District Courts. It prayed that the landowners' compensation be fixed as the contract price without interest. Petioners asserted that they had a right to interest from the time of the "taking" guaranteed by the Fifth Amendment's provision for "just compensation." The Government contended that the "just compensation" provision was not applicable, and that petitioners had no right to interest because their purchase contracts did not provide for it. One District Court decided this question in favor of the Government, 60 F. Supp. 741, but two decided against it. 61 Supp. 199.[3] The Circuit Court of Appeals held for the Government. 155 F. 2d 73, 77. In a case involving somewhat similar facts, *United States* v. *Baugh*, 149 F. 2d 190, the Circuit Court of Appeals for the Fifth Circuit had decided against the Government. Because of the apparent conflict presented and because the question is of widespread importance, we granted certiorari. The facts and issues, so far as we deem them relevant to disposition of all the cases, are identical, and so we consider all of them together.

We agree with the Circuit Court of Appeals that the Government is not obligated to pay interest in these cases. It is true that in cases submitted to them for determination of "just compensation," courts have evolved a rule whereby an element of compensation designated as interest is sometimes allowed. Under this rule, and in the absence of an agreement of the parties fixing compensation, courts first fix the fair market value of property as of the time it is taken. The property owner, against

[3] Some of the petitioners claimed interest from the date the Government took possession of the lands under the contract to the date the Government deposited the full contract price. One petitioner claimed interest only from the date of the filing of the declaration of taking on the difference on that date between the sum the Government deposited as the estimated "just compensation" and the full contract price finally deposited. Interest was awarded by the two District Courts on this latter theory only from the date of the declaration of taking.

whom there is no counterclaim, is always entitled to payment of this much. But where payment of that fair market value is deferred, it has been held that something more than fair market value is required to make the property owner whole, to afford him "just compensation." This additional element of compensation has been measured in terms of reasonable interest. Thus, "just compensation" in the constitutional sense has been held, absent a settlement between the parties, to be fair market value at the time of taking plus "interest" from that date to the date of payment.[4]

But the method used by courts to determine "just compensation" in an adversary proceeding where the parties have failed previously to agree on its amount is not the exclusive method for determining that question. The Fifth Amendment does not prohibit landowners and the Government from agreeing between themselves as to what is just compensation for property taken. See *Danforth* v. *United States*, 308 U. S. 271. Nor does it bar them from embodying that agreement in a contract, as was done here. And certainly where a party to such a contract stands upon its terms to enforce them for his own advantage, he cannot at the same time successfully disavow those terms so far as he conceives them to be to his disadvantage. That is precisely the position of the petitioners here. They made contracts for the transfer and possession of lands at prices concerning which they have never complained. At the end of prolonged litigation, the Government was barred from showing that compensations fixed by the contracts were not just, but were excessive. Having thus bound the Government to the contract prices as the measure of "just compensation", which prices, to say the least,

[4] *Seaboard A. L. Ry.* v. *United States*, 261 U. S. 299, 306; *Shoshone Tribe* v. *United States*, 299 U. S. 476, 496, 497; *Jacobs* v. *United States*, 290 U. S. 13, 16–17; *United States* v. *Klamath Indians*, 304 U. S. 119, 123.

generously meet the Fifth Amendment's "just compensation" requirement, they now seek to escape the burdens of these identical contract provisions. They invoke the Fifth Amendment in pursuit of something more than the compensation for which their contracts provide—contracts which they are not willing to abandon.

The answer to their contention is that in this posture of the cases these transactions have passed out of the range of the Fifth Amendment. For the reasoning on which interest is added to value as a part of "just compensation" in court condemnation proceedings is not applicable to this situation. That reasoning is that when a court determines just compensation, it first fixes bare value at the time of the taking and adds a sum to compensate for deferred payment of bare value so as to make the property owner whole as required by the Fifth Amendment. We do not think this formula fits contractual arrangements for compensation. Exactly what factors the parties consider, in addition to bare value, cannot easily be ascertained. This very group of transactions illustrates that there may be many such additional factors. For example, all the contracts here provided for immediate Government possession, though none contemplated immediate payments. We cannot know what amounts were added in the bargains to the bare market values as estimated, though unarticulated, allowances for the anticipated delays in payment. And other factors, which need not be enumerated, entered into the contract prices. These things demonstrate the inadvisability of applying a constitutional rule as to interest, specially designed to enable courts to calculate "just compensation," to an entirely different situation in which parties, supposedly with due regard to their own interests, bargain between themselves as to compensation. Since these petitioners have chosen to stand on their contract terms as to the amount they will receive for their property, rather than to have "just com-

pensation," in the constitutional sense, fixed by the courts, we must look to those terms for the measure of their compensation, including their right to that part of compensation which courts have called interest.

We have not overlooked the contention that this conclusion is in conflict with our holding in *Danforth* v. *United States*, 308 U. S. 271. We do not think it is. That was also a case in which a statute authorized Government agents to purchase property, and a price had been agreed on prior to condemnation proceedings. But the asserted interest claim was there denied. The decision in that case reasserted the principle that interest in condemnation proceedings does not begin until there has been a taking. After noting the several incidents asserted to constitute a taking, we held that there was no interval between the taking of the property there and payment for it. Thus the question we have considered here was neither directly involved, raised, nor given special consideration. A further incidental distinction between that case and this is that in the *Danforth* case the contract did not anticipate that the taking would precede payment.

Turning now to the right to interest under the contracts, and apart from the contention regarding the Fifth Amendment, we find that the contracts have no provision for payment of interest. No statute authorizes the payment of interest in cases like this. In the absence of specific contract or statutory provision no interest runs against the Government even though the Government's payment for the contract purchases be delayed. See *Smyth* v. *United States*, 302 U. S. 329, 353; *United States* v. *Thayer-West Point Hotel Co.*, No. 106, O. T. 1946, slip opinion, p. 3; *United States* v. *N. Y. Rayon Importing Co. et al.*, No. 94, O. T. 1946, slip opinion, p. 5–6.

There is some argument that interest should be allowed because the Declaration of Taking Act, 46 Stat. 1421, 40 U. S. C. § 258a, under which condemnation proceedings

were filed, authorizes payment of interest from the date property is taken. *Cf. United States* v. *Thayer-West Point Hotel Co., supra*, p. 3. This provision, however, is no more than a statutory embodiment of the rule for determining constitutional "just compensation" in the absence of a governing contract, and what we have already said is equally applicable to the claim for interest under the statute. It contains no specific provision for interest on Government contracts of purchase. And here, while the litigation was under the condemnation statute, the petitioners' reliance on the purchase price provisions of the contracts as to value took these claims for interest outside the purview of the interest provisions of the Declaration of Taking Act, and left them to be governed by the interest rules which would have applied had suit been brought by petitioners to enforce the contract terms. Petitioners were barred from receiving interest in any proceeding for the reason that their contracts contained no promise to pay interest.

Affirmed.

SUPREME COURT OF THE UNITED STATES

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On Writs of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit.

[February 3, 1947.]

MR. JUSTICE REED and MR. JUSTICE DOUGLAS, dissenting.

"The stipulation merely had the effect of relieving the Government from having to make proof as to what was just compensation and of running the risk of having an amount fixed which might be unsatisfactory." *United States* v. *Baugh*, 149 F. 2d 190, 192. The landowners'

"right to have interest" is found in the Constitution and is neither found nor lost in the contract." *Id.*, p. 193. The justness of the claim for interest in these cases is underlined by the fact that the land was taken over four years before full payment was made. The United States renounced these contracts and retained possession of the properties by the Declaration of Taking Act which by its terms, 46 Stat. 1421, 40 U. S. C. § 258a, entitled the condemnee to interest on the value from the date of taking except as to sums paid into court. After the decision in *Muschany* v. *United States*, 324 U. S. 49, the Government carried out its condemnation suits and obtained titles to these properties by condemnation.

In these condemnation actions the agreed price, stated in the contracts, became the "just compensation" of the Declaration of Taking Act and by that Act interest was due for such amount as had not been deposited with the trial court when the declaration was filed. Interest for the period between the declaration and the payment of the value into the trial court should be allowed on the amount by which the sum fixed in the final decree exceeded the sum deposited with the declaration of taking.